IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

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WRIT PETITION NO : 11776 of 2004

Between:

S.Trimurthy Rao, s/o Yatirajulu,
r/o Door No.49-39-8, NGOs Colony, Akkayyapalem,
Visakhapatnam-530 016.

..... PETITIONER

AND

The Commissioner, Municipal Corporation,
Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, declaring the Endorsement made in B.A.No.12321/02/ACP.II dated 9-9-2003 issued by the respondent Corporation as illegal, arbitrary, capricious, ultra vires to the provisions of Hyderabad Municipal Corporation Act and unconstitutional and consequently direct the respondent to grant permission for construction of third floor as per the plan submitted by the petitioner.

Counsel for the Petitioner : MR.N.SUBBA RAO

Counsel for the Respondent : MR.T.S.VENKATARAMANA

The Court made the following :

ORDER:

The petitioner is questioning the endorsement of the respondent dated 9-9-2003, which is to the following effect:

The applicant is hereby informed that he should submit plans G + 2 floors only. 3rd floor will be released on completion of 2nd floor as per approved plan

The case of the petitioner is that he submitted a building plan with ground plus three floors to the respondent for approval, for construction of building in the land owned by him in Sy.No.2 to 29 of Allipuram Village, Allipuram Ward, Visakhapatnam which comes within the limits of the respondent – Corporation. The grievance of the petitioner is that the respondent having collected the charges like building licence fee, VUDA charges, debris charges, betterment charges, vacant land tax etc., for approving the plan submitted by him, has made the impugned endorsement releasing permission only for ground + 2 floors.

Heard the learned counsel for the petitioner and Sri T.S. Venkata Ramana, learned standing counsel for the respondent.

Learned counsel for the petitioner submits that the respondent having collected the requisite fees and charges for grant of building permission, he has either to approve it or reject the plan submitted by the petitioner, but cannot accord permission piecemeal for each and every floor separately.

When the matter is taken up, the learned standing counsel produced the para-wise remarks furnished by the respondent in a connected writ petition - W.P. No. 2187 of 2004. He fairly admitted that as per the provisions of the Hyderabad Municipal

Corporation Act, 1955, which is even applicable to respondent – Corporation, the respondent has no power or authority to grant permission piecemeal, and make the impugned endorsements. He submitted that once plan is submitted for approval, the respondent has to either approve it as it is or reject the plan for re-presentation with the modifications suggested by the corporation, or reject it in its entirety, but they cannot issue permission in a piece meal method, as done in this case.

Having regard to the facts and circumstances of the case, I am of the view that the endorsement dated 9-9-2003 of the respondent on B.A.No.12321/02/ACPII is illegal and arbitrary and the same cannot be sustained.

The writ petition is accordingly allowed and the endorsement dated 9-9-2003 is set aside. The respondent is directed to consider the plan submitted by the petitioner and issue necessary approved building plan, if it is in accordance with the building bye-laws.

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15-7-2004

gs/asp

That Rule Nisi has been made absolute as above

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, the Fifteenth day of July, Two Thousand and Four.

1. The Commissioner, Municipal Corporation,
   Visakhapatnam.

2. 2CD copies